

ADVISORY OPINION 2005-001

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

April 1, 2005

Mr. Barry Peel
106 Pine Hill Drive
Lancaster, Kentucky 40444-1049

Dear Mr. Peel:

This is in reference to your March 2, 2005 letter requesting an advisory opinion concerning whether, in anticipation of running for County Judge-Executive, you may use volunteers to conduct telephone surveys and polls among registered voters in your county of residence in order to gauge your level of support prior to becoming a candidate subject to Kentucky election finance law. You explain that you have no intention of raising or spending money at this time, and that any work relating to this poll would be strictly voluntary with no compensation.

KRS 121.015(8) defines candidate, within the meaning of KRS Chapter 121, as “any person who has received contributions or made expenditures, has appointed a campaign treasurer, or has given his consent for any other person to receive contributions or make expenditures with a view to bringing about his nomination or election to public office, except federal office.” In KREF Advisory Opinion 2001-005, the Registry opined that absent conduct as provided in KRS 121.015(8), a person does not fall within the definition of candidate, and, therefore, is not subject to the provisions of KRS Chapter 121 relating to the registration and reporting of candidates.

In pertinent part, the Registry stated:

Clearly, the application of the above-referenced statutory provisions are contingent on the Registry having jurisdiction to regulate the kind of spending you propose. The Registry's jurisdiction is in turn contingent on a person being classified as a candidate, slate of candidates or other defined entity subject to KRS Chapters 121 and 121A.

The Registry's own statutory scheme has set forth the parameters of the Registry's permissible regulatory activity. For example, in KREF Advisory Opinion 1997-003, the Registry opined that the mere act of asking for financial support, without any incidental expenditure, would not invoke the provisions of campaign finance statutes. Rather, it is the receipt or expenditure of funds, the appointment of a campaign treasurer, or the authorization of another to raise and spend funds, "with a view to bringing about his nomination or election to public office," that is the bright line test for when one becomes a candidate under KRS 121.015(8). KREF Advisory Opinion 2001-005.

Based on the foregoing, you may conduct a volunteer telephone survey or poll for which no funds are expended to gauge your level of support in your relevant electoral community without becoming a candidate under KRS 121.015(8).

This advisory opinion represents the Registry's consideration of the circumstances presented in your letter. If you have any further questions, please do not hesitate to contact the Registry's staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

Cc: Registry Members
Sarah M. Jackson, Executive Director